

## Office of Personnel Management

## § 537.101

### § 536.304 Issuance of employee letters.

When an employee is entitled to grade and/or pay retention, the employing agency shall give to the employee, with a copy of the Notification of Personnel Action (SF-50) documenting entitlement to grade and/or pay retention, a letter describing the circumstances warranting grade and/or pay retention, and the nature of that entitlement.

### § 536.305–536.306 [Reserved]

### § 536.307 Availability of information.

(a) The Office, upon a request which identifies the individual from whose file the information is sought, shall disclose the following information from an appeal file to a member of the public, except when the disclosure would constitute a clearly unwarranted invasion of personal privacy:

(1) Confirmation of the name of the individual from whose file the information is sought and the names of the other parties concerned;

(2) The status of the appeal;

(3) The results of the appeal (i.e., proper title, pay plan, series, and grade);

(4) The classification requested (i.e., title, pay plan, series, and grade); and

(5) With the consent of the parties concerned, other reasonably identified information from the file.

(b) The Office will disclose to the parties concerned, the information contained in an appeal file in proceedings under this part, except when the disclosure would violate the proscription against the disclosure of medical information in § 297.204(c) of this chapter. For the purposes of this section, “the parties concerned” means the Government employee or former Government employee involved in the proceedings, his or her representative designated in writing, and the representative of the agency or the Office involved in the proceeding.

[50 FR 3313, Jan. 24, 1985, as amended at 54 FR 18879, May 3, 1989]

### § 536.308 Applicability of retained grade.

(a) Except as provided in paragraph (b) of this section, when an employee is entitled to grade retention, the re-

tained grade shall be treated as the employee’s grade for all purposes, including pay and pay administration, retirement, life insurance, and eligibility for training.

(b) The retained grade may not be used—

(1) In any reduction-in-force procedure;

(2) To determine whether an employee has been demoted for the purpose of terminating grade or pay retention;

(3) To determine whether an employee retains status as a GM employee (as defined in § 531.202 of this chapter); or

(4) To determine whether an employee is exempt or nonexempt from the Fair Labor Standards Act of 1938 (as amended).

[58 FR 65537, Dec. 15, 1993, as amended at 59 FR 40794, Aug. 10, 1994]

## PART 537—REPAYMENT OF STUDENT LOANS

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AUTHORITY: 5 U.S.C. 5379.

SOURCE: 66 FR 2791, Jan. 11, 2001, unless otherwise noted.

### § 537.101 Purpose.

This part provides regulations to implement 5 U.S.C. 5379, as amended, which authorizes agencies to establish a program under which they may agree to repay (by direct payment on behalf of the employee) all or part of any outstanding federally insured student loan or loans previously taken out by a candidate to whom an offer of employment has been made, or a current employee of the agency, in order to recruit or retain highly qualified personnel.

[66 FR 39406, July 31, 2001]

**§ 537.102 Definitions.**

In this part:

*Agency* has the same meaning as in 5 U.S.C. 4101(1) subparagraph (A), (B), (C), (D), or (E).

*Employee* has the meaning given that term in 5 U.S.C. 2105, except it does not include an employee occupying a position which is excepted from the competitive service because of its confidential, policy-determining, policy-making, or policy advocating character (i.e., employees serving under Schedule C appointments).

*Head of agency* means the head of an Executive agency or an official who has been delegated the authority to act for the head of the agency in the matter concerned.

*Service agreement* means a written agreement between an agency and an employee under which the employee agrees to a specified period of employment with the agency of not less than 3 years, in return for payments toward a student loan previously taken out by the employee.

*Student loan* means—

(a) A loan made, insured, or guaranteed under parts B, D or E of title IV of the Higher Education Act of 1965; or

(b) A health education assistance loan made or insured under part A of title VII of the Public Health Service Act, or under part E of title VIII of that Act.

[66 FR 2791, Jan. 11, 2001, as amended at 66 FR 39406, July 31, 2001]

**§ 537.103 Agency loan repayment plans.**

(a) *Agency loan repayment plans.* Before repaying any student loans under this part, the head of an agency must establish a student loan repayment plan. This plan must include the following elements:

(1) The designation of officials with authority to review and approve offering student loan repayment benefits (agencies should use approval delegations which are similar to those used for other recruitment and relocation incentives);

(2) The situations when the loan repayment authority may be used;

(3) Criteria that must be met or considered in authorizing loan repayments, including criteria for deter-

mining the size and timing of a payment(s);

(4) Procedures for making loan payments;

(5) A system for selecting employees to receive repayment benefits that ensures fair and equitable treatment;

(6) Requirements for service agreements (including a basis for determining the length of service to be required if greater than the statutory minimum) and provisions for recovering any amount outstanding from an employee who fails to complete the period of employment established under a service agreement and for conditions when the agency decides to waive the employee's obligation to reimburse the agency for payments made under this part; and

(7) Documentation and recordkeeping requirements sufficient to allow reconstruction of the action taken in each case. (when an employee is considered for the repayment benefit.)

(b) [Reserved]

**§ 537.104 Employee eligibility.**

In accordance with the other provisions of this part and 5 U.S.C. 5379, an agency may authorize offering loan repayments benefits to recruit or retain—

(a) Temporary employees who are serving on appointments leading to conversion to term or permanent appointments; or

(b) Term employees with at least 3 years left on their appointment; or

(c) Permanent employees; or

(d) Employees serving on excepted appointments with conversion to term, career, or career conditional appointments (including, but not limited to, Career Intern or Presidential Management Intern appointments).

**§ 537.105 Criteria for payment.**

(a) *Written determination.* Loan repayments made under this part must be based on a written determination that, in the absence of offering loan repayment benefits, the agency would encounter difficulty either in filling the position with a highly qualified candidate, or retaining a highly qualified employee in that position. Agencies can decide for themselves who has the

authority to make written determinations.

(b) *Determination for recruitment.* Each determination for recruitment purposes (including the amount to be paid) must be made before the employee actually enters on duty in the position for which he or she was recruited.

(c) *Determination for retention.* Payments authorized in order to retain an employee must be based upon a written determination that the high or unique qualifications of the employee or special need of the agency for the employee's services makes it essential to retain the employee, and that, in the absence of offering student loan repayment benefits, the employee would be likely to leave for employment outside the Federal service. This determination must be based on a written description of the extent to which the employee's departure would affect the agency's ability to carry out an activity or perform a function that is deemed essential to the agency's mission.

(d) *Selecting employees.* When selecting employees to receive loan repayment benefits, agencies must adhere to merit system principles and take into consideration the need to maintain a balanced workforce in which women and members of racial and ethnic minority groups are appropriately represented in Government service.

#### **§537.106 Procedures for making loan repayments.**

(a) *Conditions for payments.* Payments will be at the discretion of the agency and are subject to such terms, limitations, or conditions as may be mutually agreed to in writing by the agency and employee. Payments may be applied only to the indebtedness outstanding at the time the agency and the employee enter into an agreement, and may not begin before the employee enters on duty with the agency. Student loan repayment benefits must be in addition to basic pay and any other form of compensation otherwise payable to the employee involved. Tax withholdings must be deducted or applied at the time any payment is made. Tax withholdings may not be spread out over time. Since these tax implications could create a financial hardship

for the recipient of the repayment benefit, agencies can lessen the impact of tax withholdings on an employee's paycheck in one of the following ways:

(1) Agencies can make smaller payments at periodic intervals throughout the fiscal year rather than issue payments under this part in one lump sum;

(2) Employees can write a check to the paying agency to cover their tax liability rather than have the tax liability withheld from the employee's paycheck;

(3) Agencies can deduct the amount of taxes to be withheld from the loan repayment benefit before issuing payment to the holder of the loan.

(4) Agencies are strongly advised to consult the Internal Revenue Service for further details concerning these options as well as the tax withholding implications of payments under this part.

(b) *Loans to be repaid.* Before authorizing loan repayments, an agency must verify with the holder of the loan that the employee has an outstanding student loan that qualifies for repayment under this part. Agencies should verify remaining balances to ensure that loans are not overpaid. An agency may repay more than one loan as long as the loan repayments do not exceed the limits set forth in paragraph (c) of this section.

(c) *Size of payments.* In determining the size of the loan payments, an agency should take into consideration the employee's value to the agency, and how far in advance the agency can commit funds. If budgetary considerations are an issue, agencies have the discretion to determine the repayment benefit amount given to an employee each year. This type of arrangement must be included in the written service agreement with the employee. The amount paid by the agency is subject to all the following maximum limits:

(1) \$6,000 per employee per calendar year; and

(2) A total of \$40,000 per employee.

(d) *Employee responsibility.* The employee will be responsible for making loan payments on the portion of the loan(s) that continues to be the employee's responsibility. Payments under this part do not exempt an employee from his or her responsibility

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and/or liability for any loan(s) the individual has taken out. The employee will also be responsible for any income tax obligations resulting from the loan repayment benefit.

### **§ 537.107 Service agreements.**

(a) Before any loan repayments may be made, an agency must require that the employee sign a written agreement to complete a specified period of employment with the agency and to reimburse the agency for loan repayment benefits, when required by § 537.109. This agreement may also specify any other employment conditions the agency considers to be appropriate, such as, but not limited to, the employee's position and the duties he or she is expected to perform, work schedule, or level of performance.

(b) The minimum period of employment to be established under a service agreement must be 3 years, regardless of the amount of loan repayment authorized. Agencies can state in their service agreements that increases or renewals of payments made under this part can be made without requiring the employee to enter into a new service agreement.

(c) A service agreement made under this part in no way constitutes a right, promise, or entitlement for continued employment or noncompetitive conversion to the competitive service. This language should be stated in the service agreement.

### **§ 537.108 Loss of eligibility for loan repayment benefits.**

(a) An employee receiving loan repayment benefits from an agency will be ineligible for continued benefits from that agency if the employee:

- (1) Separates from the agency; or
- (2) Does not maintain an acceptable level of performance, as determined under standards and procedures prescribed by the head of the agency; or
- (3) Violates any of the conditions of the service agreement.

(b) For the purpose of applying paragraph (a) of this section, in the case of an employee covered by an appraisal system established under part 430, subpart B, of this chapter, the employee's most recent rating of record must be at least level 3 ("Fully Successful").

## **5 CFR Ch. I (1–1–02 Edition)**

### **§ 537.109 Employee reimbursements to the Government.**

(a) Except as provided in paragraph (d) of this section, an employee who fails to complete the period of employment established under a service agreement will be indebted to the Federal Government and must reimburse the paying agency for the amount of any student loan repayment benefits the employee received.

(b) Failure to complete the period of employment established under a service agreement occurs when the employee's service with the agency terminates before the employee completes the period of employment specified in the service agreement because:

(1) The employee is separated involuntarily on account of misconduct or performance; or

(2) The employee leaves the agency voluntarily.

(c) If an employee fails to reimburse the agency for the amount owed under paragraph (a) of this section, a sum equal to the amount outstanding must be recovered from the employee under the agency's regulations for collection by offset from an indebted Government employee under 5 U.S.C. 5514 and subpart K of part 550 of this chapter, or through the appropriate provisions governing debt collection if the individual is no longer a Federal employee.

(d) Paragraph (a) of this section does not apply when the employee fails to complete a period of employment established under a service agreement because:

(1) The employee is involuntarily separated for reasons other than misconduct or performance; or

(2) The employee leaves the agency voluntarily to enter into the service of any other agency, unless reimbursement to the paying agency is otherwise specified in the service agreement.

(e) The head of an agency may waive, in whole or in part, a right of recovery of an employee's debt if he or she determines that recovery would be against equity and good conscience or against the public interest.

(f) Any amount repaid, or recovered from, an employee under this section will be credited to the appropriation account from which the amount involved was originally paid. Any

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amount so credited will be merged with other sums in such account and will be available for the same purposes and period, and subject to the same limitations (if any), as the sums with which merged.

### § 537.110 Records and reports.

(a) Each agency must keep a record of each determination made under this part and make such records available for review upon OPM's request. These records may be destroyed after 3 years or after OPM formally evaluates the program (whichever comes first).

(b) Before January 1st of each year, each agency must submit a written report to the Office of Personnel Management stating when the agency made student loan repayments on behalf of an employee during the previous fiscal year. Each report must include:

(1) The number of employees selected to receive this benefit;

(2) The job classifications of the employees selected to receive benefits under this part; and

(3) The cost to the Federal government for providing benefits under this part.

[66 FR 2791, Jan. 11, 2001, as amended at 66 FR 39406, July 31, 2001]

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